IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6755 OF 2007

FROM

MISC NOTICE NO. 385 OF 2006

IN

R.A.D. SUIT NO. 3984 OF 1989

Bombay Social Service
and anr. ...Petitioners
(Orig.plaintiffs)

Versus

Ahmed Haji Mohammed ....Respondents
(orig.Defendants)

Bharat Joshi for the petitioners.
Ms.Potdar for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

29th November, 2007

P.C. :

1. It is not necessary to interfere with the impugned order at this stage, inasmuch as on the own showing of the petitioners, they have preferred an Appeal against the decree of the Trial court dismissing their suit. It will be open for them to urge before the Appellate court that during the pendency of the Appeal, the Trial Court had no jurisdiction to exercise

any powers, much less, those available under Section 152 of the Code of Civil Procedure and correct the alleged errors in the decree. It will be equally open to urge that the Trial Court was functuos officio. When this liberty is admittedly available and the lower appellate court is bound to go into this issue, after hearing both sides, then, there is no reason to interfere with this order. Petition is accordingly dismissed with the above clarification.

sd/-

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